

**TOWN OF KITTERY, MAINE
PLANNING BOARD MEETING**

**APPROVED
SEPTEMBER 10, 2015**

Council Chambers

Meeting called to order: 6:02 p.m.

Board members present: Chair Ann Grinnell, Vice Chair Karen Kalmar, Robert Harris, Deborah Lynch, David Lincoln, Secretary Debbie Driscoll-Davis and Mark Alesse.

Members absent: None.

Staff present: Chris DiMatteo, Town Planner.

Pledge of Allegiance

Minutes: August 20, 2015

Ms. Kalmar moved to approve the minutes of August 20, 2015 as written.

Mr. Lincoln seconded.

Motion carried: 6-1-0 with Mr. Harris in opposition.

Public Comment: None.

PUBLIC HEARING/OLD BUSINESS

ITEM 1 – Rockwell Homes, 89 Route 236 – Preliminary Site Plan Review

Action: hold public hearing, approve or deny preliminary plan. Owner/applicant Rockwell Homes, LLC request consideration of plans for a single, 2,520-square-foot building containing business offices and a showroom and a drive-through-only restaurant at 89 Route 236 (Tax Map 28, Lot 14-2) in the Commercial 2 (C-2) Zone. Agent is Ryan McCarthy, Tidewater Engineering & Surveying, LLC.

Ryan McCarthy of Tidewater Engineering approached the podium to give a brief description of the project:

- Mr. McCarthy noted that the project will include a multi-use building. A portion of the building will be an Aroma Joes drive through and the remaining part of the building will be three office units. There will be parking off to the side of the building for visitors and towards the rear for employees.

Ms. Grinnell opened the public hearing.

Anita Bunting, Fernald Road resident

- Ms. Bunting commented that on the paperwork it says something about storage units and she is not crazy about having them her backyard.

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- Ms. Bunting is mostly concerned about Aroma Joes because of its location near the transfer station where there are constantly accidents and increased traffic will create more of a safety hazard than there already is.

Beth Hallissey, Fernald Road resident

- Ms. Hallissey asked how many stories the building will have and if Aroma Joes is a separate building.
- Mr. McCarthy responded to her questions stating that it is a two story building that consists of Aroma Joes and office units. He noted that Aroma Joes is to the side of first story. Ms. Hallissey asked which side of the building the Aroma Joes will be on and Mr. McCarthy responded that it will be on the Fernald Road side.

Ms. Grinnell closed the public hearing.

Ms. Driscoll-Davis commented that the storage units are a separate project on the lot and that the only project at hand is the building with Aroma Joes and Rockwell homes. She stated that she is concerned about the landscaping and the traffic. She noted that pulling out of the property after the sitewalk was difficult and that there is not good access on and off of Route 236. Ms. Grinnell asked if a traffic study had been done by our consultants and Mr. DiMatteo responded that it had not and would be done by CMA peer review. He suggested that if the Board was hesitant about preliminary approval and traffic they could make a condition of approval stating that traffic should be reviewed and resolved.

Ms. Grinnell asked the Board to state their views of the traffic issue at the site. Mr. Lincoln noted that he is concerned about the traffic and that he does not believe that the current traffic analysis was accurate or insightful. He commented that when the Shipyard is changing shifts, Route 236 becomes a superhighway. He added that the storage unit question is relevant because they plan to share a driveway with this current project so traffic would be increased to an extent. Mr. Harris commented that the easiest solution is to make Fernald Road a one way street and maybe add a traffic light. Ms. Lynch noted that because Fernald Road is at an angle, it creates a hazard for people pulling out of the property. Ms. Grinnell commented that there is very little chance of the Town making Fernald Road a one way street since it would create problems for the residents on that street. The Board came to a consensus that the traffic issue at the site must be resolved as a condition of approval.

Mr. McCarthy responded to some of the concerns of the Board. He noted that at peak hour 130 trips were generated to the site but of those 130 trips, 85% are passerby trips, meaning that they were already on Route 236 to start with. He added that they had also incorporated the storage units into the traffic report which only added four peak trips. Mr. McCarthy further noted that Route 236 has wide shoulders which allow vehicles to move around stopped vehicles and that

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the biggest impact is on those turning left onto Route 236 heading north. He commented that the DOT analyzes the site with a level of service that ranges from A through F. This site has As, Bs and a couple Cs (from turning left out of the site and turning into the site). They still need to have a meeting with Maine DOT but the report has already been submitted to them. Ms. Grinnell asked if the Town Planner could also attend the meeting.

Mr. Alesse asked if they could change the site so that cars would exit onto Fernald Road. Mr. McCarthy responded that it was a consideration during the conceptual design process but because of the size of the site, it is difficult to get out of the drive through and make a hard turn onto Fernald Road. Additionally, they cannot move the drive through windows back because it would affect other vehicles cueing in line.

Ms. Kalmar read the CMA comments aloud and noted that she is eager to hear the CMA's input on the traffic reports. She added that it would be in the applicant's best interest to address the Conservation Commission's concerns in writing. Mr. McCarthy responded that he received the letter from the Conservation Commission a few moments ago and responded to a few of their concerns. He noted that he has a letter from the scientist regarding the function of the wetlands which states that this wetland holds little wetland function in value and mostly collects sediments and treats pollutants coming off the roads. He added that they do not want to wipe out the wetland completely and if they remove the trees they will promote a denser vegetation on the ground cover which will let the wetland take over and improve the values for sediment and pollutant removal. Ms. Grinnell asked the applicant to address the concerns in writing for the next packet.

Ms. Driscoll-Davis asked how far back the building is from the right of way. Mr. McCarthy responded that it is about 30 feet but he would have to measure to be sure. Mr. Lincoln noted that in the staff analysis it mentions the tree cutting issue. He commented that he would like to have the issue resolved in writing for the next meeting. Ms. Kalmar asked if the Board could give the applicant an idea of whether or not they approve the parking calculation. The Board came to a consensus that they do agree with the parking calculation as it has been done.

Ms. Kalmar moved to approve the preliminary plan dated July 21, 2015 for 89 Route 236 (Tax Map 28 Lot 14-2) located in the Commercial 2 (C-2) Zone for owner and applicant Rockwell Homes LLC.

Mr. Alesse seconded the motion.

Mr. DiMatteo asked if they wanted to site the plan notes for the conditions. Ms. Kalmar read the conditions aloud which included:

1. Revise plan to limit the extent of clearing and increase the clearing limits closest to Fernald Road by 50 ft.

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2. Revise the landscape plan to accommodate planting that will effectively screen the parking at the front of the building and drive through vehicles
3. Address Planning Board CMA and staff comments prior to submitting a final plan, add additional handicap parking space, show additional test pit, reserve area for septic, details for storm water basins, sign details, submit final permits and address Conservation Commission's concerns in writing
4. Address traffic concerns

Motion carried: 7-0-0

Mr. McCarthy noted that they changed the style of the building to incorporate the signage which included adding gables on the front of the building and they also changed to a hip roof.

ITEM 2 – Kolod Seawall Replacement – Shoreland Development Plan Review

Action: hold public hearing, approve or deny plan. Owner/applicant Jeffrey and Deborah Kolod requests consideration of plans for replacement of an existing seawall and the expansion of a waterfront shed. The 0.45-acre lot is located at 92 Whipple Road (Tax Map 10, Lot 19) in the Residential-Urban (R-U) and Shoreland Overlay (OZ-SL-250') Zones. Agent is Barney Baker, Baker Design Consultants.

Jeffrey Kolod, owner of the property, approached the podium to state a few points:

- He noted that they have two issues. The first is that the seawall comes apart and the land drains into the bay. They want to prevent losing the bank which has come down several inches over the past couple years. The second issue is the boat shed. It's small and needs some repair, windows and a new roof. The shed would hold boating supplies.

Barney Baker of Baker Design Consultants gave a short presentation to the Board which included the following points:

- Mr. Baker noted that they have submitted applications to Maine DEP, Army Corp. and KPA. They have made some changes to the plan. Ms. Grinnell stopped Mr. Baker and asked him why they did not have a copy of the plan if changes were made to it. She noted that the public hearing is to accept or deny the plan and they do not have copy of the current plan. Mr. DiMatteo noted that the changes were based on comments made at the sitewalk. Ms. Grinnell responded that they are being asked to approve or deny a plan that they do not have a copy of. Mr. DiMatteo commented that in the notes, the Board is recommending that they continue the plan and noted that the Code allows for the Board to review and approve once they see the plan.
- Mr. Baker commented that because they received so many comments regarding the lower seawall, they have pulled it out of the plan. They now only want to include the upper seawall which goes along the existing wall. They have also removed a note that says they

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would regrade the marine ways and they are now going to leave it as it is. Mr. Baker also noted that there have been no changes to the proposed building expansion which is not going to increase value by more than 50% or be more nonconforming than it already is.

- Mr. Baker commented that the Planner requested they perform an accounting of the impervious areas that have changed and they have included that on the plan. He noted that the location of the Highest Astronomical Tide (HAT) has changed since they last renovated the property. The HAT is published by the DEP on an annual basis. For this plan they used the 2015 HAT which is at a marginally lower elevation than the one on the 2013 plan. The new HAT adds about 40 sq. ft. to the overall property area. Mr. Baker noted that if they take the seawall away and add the new seawall which has additional impervious areas they are adding 67 ft. to the impervious area. He commented that he also included the expansion of the shed and deducted the increased area from the new HAT line to come up with the new impervious area calculation which has increased from 22.8% to 23.2%. He noted that the zoning criteria is 20%.

Ms. Grinnell opened the public hearing.

Eugene Smith, Whipple Road resident

- Mr. Smith noted that the seawall in question abuts the seawall on his property line. He stated that the seawall on the Kolod property is 6 or 7 ft. wide and supports most of boathouse that is going to be repaired. He commented that if the Kolod's replace the wall with solid slab, it will affect the tidal flow and he is concerned about a high tide or storm surge washing out his wall that has been stable until now.
- Mr. Smith stated that he would like, as a condition of approval, permission to extend his privacy fence without being hassled. He noted that when the initial construction was done, they lost almost all of the tree canopy. Mr. Smith had planned to put up one section of fence but were harassed by neighbors and received a call from the former CEO and Mr. Kolod's lawyer. Mr. Smith commented on a situation when they were notified by the gas company of Mr. Kolod's intent to open a bed and breakfast on his property and reiterated his request to extend his fence if needed without hassle from the Town and/or his neighbors.

Earldean Wells, Chair of the Conservation Commission, was confused by Mr. Baker's discussion and asked the Board if they were still addressing a proposed new granite wall. Ms. Grinnell responded that they are only addressing the upper wall since the lower wall no longer exists.

Ms. Grinnell closed the public hearing.

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Mr. Kolod approached the podium to respond to comments made. He noted that there were two large trees removed on his property which could not be saved and neither tree was near the fence. He stated that they also added a new tree and that no canopy had existed on the property.

Mr. Baker explained the property lines and marine ways as they are drawn on the new plan to the Board. Ms. Grinnell asked Mr. Baker to explain the wall. Mr. Baker responded that a second wall came in along the existing wall and made a diagonal cut across to the wall on the neighbor's property. The intent was to create a transition but because they received so much negative comment about the wall they removed it from the plan. They are going to leave the remnants of the lower wall which is essentially at grade with the marine railway construction that is there now. Ms. Driscoll-Davis asked where the new 67 ft. figure came from and Mr. Baker explained it using the plan.

Ms. Wells asked Mr. Baker about the reconstructed seawall on the front of the property and whether it is reconstructed or remains as it is today. Mr. Baker noted that the new seawall extends from the neighbor's property along the front to the point near the marine ways. He added that the KPA did not want them to alter the rockweed in that area. Ms. Driscoll-Davis asked if they had included the swimming pool in the calculation of the impervious area. Mr. Kolod commented that when they originally went through the property with an architect and a surveyor they had a plan to put a pool in but have since decided not to go forward with the pool. He added that the 22.8% calculation included the pool, the area around the pool and a deck. Ms. Kalmar asked if they were going to remove the pool from the plan and Mr. DiMatteo noted that they would need to bring the plan in and modify it.

Ms. Grinnell reopened the public hearing by request.

Susan Thompson, Whipple Road resident

- Ms. Thompson noted that the swimming pool has not been constructed but they do have a hot tub with a platform underneath it. She commented that the hot tub and surrounding area needs to be added to the modified plan.

Ms. Grinnell closed the public hearing.

Ms. Lynch commented that the patio needs to be added to the plan as well. Mr. Lincoln asked if the proposed replacement seawall would be the same footprint and the same height. Mr. Baker responded that it is the same footprint and the same height as the existing wall at the dock but the existing wall drops 18 inches to meet the wall on the neighbor's property. They would keep the same elevation all the way across the front, raising the wall approximately 18 inches. Mr. Lincoln commented that the background section discusses five elements for the new application and the original document mentions two elements. He asked Mr. Baker to clarify. Mr. Baker read

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the five items aloud and commented on them. Ms. Driscoll-Davis asked if they were still trying to work around the roots of the tree. Mr. Baker responded that they will do the best they can and they will not disrupt the marine ways on the property. Mr. DiMatteo asked what portion of the wall will be above or below the HAT line. Mr. Baker responded that the HAT comes from the neighbor's wall to the boat ramp and upwards of the marine ways, following the existing seawall. He added that they are filling approximately 45 sq. ft. of the shaded area, which he has reported to Maine DEP.

Ms. Grinnell asked if they planned on removing the shed, fixing it somewhere else and putting it back. Mr. Baker commented that they have to remove the shed and place it in an upland location temporarily to build the wall underneath. Ms. Grinnell questioned whether or not they are allowed to put the shed back once it has been removed. Mr. DiMatteo commented that they can pick it up and put it back without problem as long as they do not expand it to more than 50% of the market value. If they are, then the Board needs to determine if the building is as far away from the protected resource as possible. Ms. Driscoll-Davis gave an example of the deck on her property which she is allowed to repair but cannot remove and put back. Mr. DiMatteo suggested that the applicant remove the shed to repair the wall and put it back, expanding it once it is back in place.

Ms. Wells questioned whether they were allowed to build on their dock as she was under the impression that the CEO did not allow that. Mr. DiMatteo gave an example of a Knight Avenue property. Mr. Lincoln asked how much larger the building would be once they expand it. Mr. Baker responded that they are trying to keep it under 30%. Mr. DiMatteo asked whether it would have a new foundation and commented that the applicants needs to go through the process and see if the improvements that they are looking to do will make the structure great than 50% of its market value. Ms. Driscoll-Davis asked if the stone wall was part of the foundation of the structure. Mr. Baker commented that the building is upland and not over the water and that it is sitting on the wall. Mr. Kolod noted that there is no foundation under the shed and that it is not on the water.

Mr. Baker responded to Mr. Smith's comments about water eroding the wall on his property. He noted that the wall will create increased splashing but should not harm the wall. He added that they would like to put Mr. Kolod's wall in and then stack some stone in front of it up to the high water mark so that a wave will not know the difference between the rough rock surface on his wall and the stone packed in front of it. Ms. Wells commented on the infill behind the new wall, noting that they would be taking away substantial amount of rock and other material. Mr. Baker responded that they would take the stone and reuse it for drainage purposes. They would also meet the existing grade at the land behind the wall and there will only be minor infilling.

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Ms. Kalmar moved to continue, not to exceed 90 days, the Shoreland Development Plan dated July 23, 2015 for 92 Whipple Road (Tax Map 10, Lot 19) in the Residential-Urban (R-U) and Shoreland Overlay (OZ-SL-250') Zones for owner and applicant Jeffrey and Deborah Kolod.

Mr. Harris seconded the motion.

Ms. Grinnell noted that they are going to continue the plan, not the public hearing, to have a further discussion on the project. She noted that in order to have that discussion they will need to have copies of the same things that are being presented. Ms. Kalmar noted they need the DEP input as well.

Motion carried 7-0-0.

ITEM 3 – Kittery Point Yacht Yard Renovations –Shoreland Development Plan Review

Action: hold public hearing, approve or deny plan. Owner and applicant MGX, LLC a.k.a Kittery Point Yacht Yard, Corp. requests consideration of plans for replacement of an existing marine railway with an at-grade boat ramp requiring fill within the intertidal zone. The 1.3-acre lot is located at 48 Bowen Road (Tax Map 17, Lot 10) in the Residential-Urban (R-U) and Shoreland Overlay (OZ-SL) and Commercial Fisheries/Maritime Activities (OZ-CMFU) Overlay Zones. Agent is Barney Baker, Baker Design Consultants.

Barney Baker of Baker Design Consultants approached the podium to give present a few facts regarding the project:

- Mr. Baker noted that they have a DEP permit, an Army Corp. permit, and an application pending with the KPA. They anticipate approval in the KPA's October meeting. He noted that the project is almost entirely at sea and there is little change in upland area. Mr. Baker added that they are replacing the marine railway with a boat ramp. The ramp is steeper and starts at same point that railway does. They are also going to be filling in the upland area and creating an ADA accessible facility for transient boaters. He added that they also want to put in a pump out facility which they would like to be part of plan.

Mr. Grinnell opened the public hearing and, hearing no comments, closed the public hearing.

Mr. Lincoln asked if the KPA would need to sign off on the plan first. Ms. Grinnell noted that they could make that a condition of approval. Ms. Kalmar asked if they could get a sense of the Board's opinion on the parking situation. Ms. Grinnell asked the Board their opinion on the parking. Ms. Driscoll-Davis asked about the valet parking. Mr. DiMatteo responded that the parking depends on the demand and most of it is not used. He noted that an area of the parking on the plan is not accurate and it actually lies in the right of way. Tom Allen, owner of the property, responded that the valet parking acts as an overflow for the primary parking area.

Ms. Driscoll-Davis asked if they had restrictions against party boats parking at the facility. Mr. Allen responded that they will not allow party boats to take up spaces on the property and the grant does not specify who is or who is not allowed to stay there. Ms. Lynch asked about floating bars or restaurants. Mr. Allen responded that those would not be allowed either. Ms. Wells commented that there is no increase in the devegetated area but asked about planting in a specific area. Mr. Allen assured her that there are plants in that area now.

Ms. Lynch moved to approve with conditions the Shoreland Development Plan at 48 Bowen Road (Tax Map 17, Lot 10) in the Residential-Urban (R-U) and Shoreland Overlay (OZ-SL) and Commercial Fisheries/Maritime Activities (OZ-CMFU) Overlay Zones for owner and applicant MGX, LLC a.k.a. Kittery Point Yacht Yard, Corp.
Mr. Harris seconded the motion

Ms. Kalmar mentioned adding the condition about the pump out facility to the plan. Ms. Driscoll-Davis commented that she would not want to hold up the process by making that a condition of approval.

Motion carried: 7-0-0

Mr. Allen explained the process of the pump out facility and noted that they received a grant for it. Mr. DiMatteo noted that it would not require review from the Board. Ms. Driscoll-Davis asked about the pump out line. Mr. Allen noted that the line goes from the tanks to the Town sewer. Ms. Driscoll-Davis asked if the existing sewer line is adequate to handle the changes. Mr. Allen responded that it is adequate but he might need to replace his pump.

FINDINGS OF FACT

For 48 Bowen Road, Kittery Point Yacht Yard Shoreland Development Plan Review

WHEREAS: Owner and applicant MGX, LLC a.k.a Kittery Point Yacht Yard, Corp. requested approval of plans for replacement of an existing marine railway with an at-grade boat ramp requiring fill within the intertidal zone with an increase of slips and the addition of transient boating services . The 1.3-acre lot is located at 48 Bowen Road (Tax Map 17, Lot 10) in the Residential-Urban (R-U) and Shoreland Overlay (OZ-SL) and Commercial Fisheries/Maritime Activities (OZ-CMFU) Overlay Zones. Agent is Barney Baker, Baker Design Consultants,

hereinafter the “Development;” and

And pursuant to the Plan Review meetings conducted by the Planning Board as noted; *{in the Plan Review Notes prepared for 9/10/2015}*

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Shoreland Project Plan	August 20, 2015
Site Walk	September 3, 2015
Public Hearing	September 10, 2015
Approval	Approved, September 10, 2015

And pursuant to the application, plans and other documents considered to be a part of the approval by the Planning Board in this finding consist of the following;{ *as noted in the Plan Review Notes prepared for 9/10/2015*} (hereinafter the “Plan”):

1. Development Plans C-1 through C-3 dated September 2015

NOW THEREFORE, based on the entire record before the Town Planning Board and pursuant to the applicable standards in the Land Use and Development Code, the Town Planning Board makes the following factual findings and conclusions:

FINDINGS OF FACT

Chapter 16.3 LAND USE ZONE REGULATIONS

16.3.2.17. D Shoreland Overlay Zone

1.d The total footprint of areas devegetated for structures, parking lots and other impervious surfaces, must not exceed twenty (20) percent of the lot area, including existing development, except in the following zones...

Findings: The property is nonconforming with regard to this standard, however, it does not appear the proposed development will increase the nonconformity and the plans are to be revised to demonstrate this.

Conclusion: With condition #5 this standard appears to have been met.

Vote: 7 in favor 0 against 0 abstaining

Chapter 10 DEVELOPMENT PLAN APPLICATION AND REVIEW

Article 10 Shoreland Development Review

16.10.10.2 Procedure for Administering Permits

D. An Application will be approved or approved with conditions if the reviewing authority makes a positive finding based on the information presented. It must be demonstrated the proposed use will:

1. ***Maintain safe and healthful conditions;***

Finding: The proposed development does not appear to have an adverse impact.

Conclusion: This requirement appears to be met.

Vote: 7 in favor 0 against 0 abstaining

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<p>2. Not result in water pollution, erosion or sedimentation to surface waters; <u>Finding:</u> Maine DEP Best Management practices will be followed for erosion and sedimentation control during site preparation and building construction. (see conditions #2 and #3) to avoid impact on adjacent surface waters. <u>Conclusion:</u> The proposed development does not appear to have an adverse impact. With the suggested conditions #2, and #3, this requirement appears to be met.</p>
<p>Vote: <u>7</u> in favor <u>0</u> against <u>0</u> abstaining</p>
<p>3. Adequately provide for the disposal of all wastewater; <u>Finding:</u> The development has a tank that is pumped to town sewer. <u>Conclusion:</u> This requirement appears to be met.</p>
<p>Vote: <u>7</u> in favor <u>0</u> against <u>0</u> abstaining</p>
<p>4. Not have an adverse impact on spawning grounds, fish, aquatic life, bird or other wildlife habitat; <u>Finding:</u> Maine DEP Best Management practices will be followed for erosion and sedimentation control during site preparation and building construction. (see conditions #2 and #3) to avoid impact on adjacent surface waters. These conditions should be added to the plan. <u>Conclusion:</u> The proposed development does not appear to have an adverse impact. With the suggested conditions #2 and #3, this standard appears to be met.</p>
<p>Vote: <u>7</u> in favor <u>0</u> against <u>0</u> abstaining</p>
<p>5. Conserve shore cover and visual, as well as actual, points of access to inland and coastal waters; <u>Finding:</u> Shore cover is not adversely impacted <u>Conclusion:</u> This requirement appears to be met.</p>
<p>Vote: <u>7</u> in favor <u>0</u> against <u>0</u> abstaining</p>
<p>6. Protect archaeological and historic resources; <u>Finding:</u> There does not appear to be any resources impacted. <u>Conclusion:</u> This requirement appears to be met.</p>
<p>Vote: <u>7</u> in favor <u>0</u> against <u>0</u> abstaining</p>
<p>7. Not adversely affect existing commercial fishing or maritime activities in a commercial fisheries/ maritime activities district; <u>Finding:</u> The proposed development does not appear to have an adverse impact. <u>Conclusion:</u> This requirement appears to be met.</p>
<p>Vote: <u>7</u> in favor <u>0</u> against <u>0</u> abstaining</p>
<p>8. Avoid problems associated with floodplain development and use; <u>Finding:</u> The proposed development is not within the floodplain. <u>Conclusion:</u> This requirement appears to be met.</p>
<p>Vote: <u>7</u> in favor <u>0</u> against <u>0</u> abstaining</p>
<p>9. Is in conformance with the provisions of this Code; <u>Finding:</u> The proposed development appears to be in conformance with the provisions of this Code with a reasonable reduction of required parking based on past actual parking demand incurred by the marine-related services provided by the yacht yard. In addition, the plan states and demonstrates compliance with the percent of lot area allowed to be devegetated. See</p>

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condition #5

Conclusion: This requirement appears to be met.

Vote: 7 in favor 0 against 0 abstaining

10. *Be recorded with the York County Registry of Deeds.*

Conclusion: As stated in the Notices to Applicant contained herein, Shoreland Development plans must be recorded with the York County Registry of Deeds prior to the issuance of a building permit.

Vote: 7 in favor 0 against 0 abstaining

Based on the foregoing Findings, the Planning Board finds the applicant has satisfied each of the review standards for approval and, therefore, the Planning Board approves the Shoreland Development Plan Application of MGX, LLC a.k.a Kittery Point Yacht Yard, Corp. located at 48 Bowen Road (Tax Map 17, Lot 10) in the Residential-Urban (R-U) and Shoreland Overlay (OZ-SL) and Commercial Fisheries/Maritime Activities (OZ-CMFU) Overlay Zones. Zones and subject to any conditions, waivers or modifications, as follows:

Modifications: 16.8.9.4 Off-Street Parking Standards

Conditions of Approval (to be included on final plan to be recorded):

1. No changes, erasures, modifications or revisions may be made to any Planning Board approved final plan. (Title 16.10.9.1.2)
2. Applicant/contractor will follow Maine DEP *Best Management Practices* for all work associated with site and building construction to ensure adequate erosion control and slope stabilization.
3. Prior to the commencement of grading and/or construction within a building envelope, as shown on the Plan, the owner and/or developer must stake all corners of the envelope. These markers must remain in place until the Code Enforcement Officer determines construction is completed and there is no danger of damage to areas that are, per Planning Board approval, to remain undisturbed.
4. All Notices to Applicant contained herein (Findings of Fact dated 8/20/15).

Conditions of Approval (not to be included on final plan):

5. Incorporate any plan revisions on the final plan as recommended by Staff, Planning Board, or Peer Review Engineer, and submit for Staff review prior to presentation on final Mylar.
6. Approval by the Kittery Port Authority, Maine DEP and the US Army Corps of Engineers is required. If any of these approvals requires changes to the plan, additional approval by the Planning Board is required.

The Planning Board authorizes the Planning Board Chair to sign the Final Plan and the Findings of Fact upon confirmation of compliance with any conditions of approval.

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Vote: 7 in favor 0 against 0 abstaining

Approved by the Kittery Planning Board on September 10, 2015

Notices to Applicant:

1. Incorporate any plan revisions on the final plan as recommended by Staff, Planning Board or Peer Review Engineer, and submit for Staff review prior to presentation of final mylar.
2. Prior to the release of the signed plans, the applicant must pay all outstanding fees associated with the permitting, including, but not limited to, Town Attorney fees, peer review, newspaper advertisements and abutter notification.
3. One (1) mylar copy of the final plan and any and all related state/federal permits or legal documents that may be required, must be submitted to the Town Planning Department for signing. Date of Planning Board approval shall be included on the final plan in the Signature Block. After the signed plan is recorded with the York County Registry of Deeds, a mylar copy of the signed original must be submitted to the Town Planning Department.
4. This approval by the Town Planning Board constitutes an agreement between the Town and the Developer, incorporating as elements the Development Plan and supporting documentation, the Findings of Fact, and any Conditions of Approval.

Per Title 16.6.2.A - An aggrieved party with legal standing may appeal a final decision of the Planning Board to the York County Superior Court in accordance with Maine Rules of Civil Procedures Section 80B, within forty-five (45) days from the date the decision by the Planning Board was rendered.

OLD BUSINESS

ITEM 4 – Yankee Commons Mobile Home Park Expansion – Subdivision Preliminary Plan Review

Action: approve or deny preliminary plan. Owner/applicant Stephen A. Hynes Real Property Trust Agreement requests consideration of plans for a 78-lot expansion of the Yankee Commons Mobile Home Park for the property located at US Route 1, Tax Map 66, Lot 24 in the Mixed Use (MU) and Residential – Rural (R-RL) Zones. Agent is Thomas Harmon, Civil Consultants.

Jay Stevens of Civil Consultants approached the podium and responded to the staff review. He noted that the density calculations have been resolved. He further noted that they had requested a waiver for the sidewalks as they are not necessary and the other parks do not have sidewalks. This project is for residents who are 55 years of age and older so there will not be children. Mr.

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Stevens commented that they are concerned with the request to add more pavement which would add almost another half acre of impervious area. Ms. Kalmar asked how much pavement there is for people to walk on. Mr. Stevens responded that there are three different road sections. The first comes in from Idlewood lane and leads into the site, next is a split section and then there are the internal roads. The internal section of road is 22 ft. of paved roadway with a couple ft. shoulder on each side. The divided section has 14 ft. of pavement on each side and the internal roads are the narrowest with only 20 ft. of pavement, two 10 ft. lanes and 2 ft. shoulders on either side. He noted that the shoulders are gravel.

Mr. DiMatteo asked if there would be striping on the roads. Gary Beers responded that there would be striping and that the speed limit is only 10 mph. He noted that with the amount of traffic anticipated, there would rarely be two cars passing each other. Ms. Driscoll-Davis asked if there would be speed bumps. Mr. Beers responded that they would not have speed bumps because that would make it difficult for first responders to access the site, especially in the winter. Ms. Driscoll-Davis asked who polices the speed limit. Mr. Beers responded that the park does that and they have strict punishments for violating the rules.

Mr. DiMatteo asked if they would consider having 9 ft. travel lanes and 3 ft. shoulders and striping the roadway to reflect that. Mr. Beers said that they would not oppose that. Ms. Driscoll-Davis commented that gravel shoulders would not comply with ADA standards. Mr. Beers stated that sidewalks are not required by Maine standards. Ms. Kalmar commented that they just wanted a safe place for people to walk. Mr. Beers commented that they could make all interior traffic one way and add a 3 ft. paved shoulder for pedestrians. Ms. Lynch asked if that would affect first responders. Mr. Stevens noted that they would have to narrow the road in order to make it a one way. Mr. DiMatteo noted that they would have to have enough width for emergency cars and firetrucks. Mr. Beers commented that they could review the plan and discuss it again with the Board after they meet with the police and fire departments. He added that a narrower road might also prevent people from parking on the street, which he was in favor of.

Mr. Stevens commented on the required setbacks, noting that the 20 ft. does not allow them to do what they want with the site but they are willing to change the plans to reflect the 20 ft. setback. He stated that they are providing dumpsters and that everything from the development into the wetlands will be open space. He added that they are willing to give an easement to the Town for the area from the outside property to the non-disturbed land buffer. He noted that the total sq. ft. exceeds the requirement for the open space. Mr. DiMatteo asked how they created the property line between the open space and the reserved area. Mr. Stevens responded that they created it based upon specific required distances from individual structures.

Ms. Driscoll-Davis asked if any of the conservation area will be excavated. Mr. Stevens responded that they will only excavate areas where units are and where the treatment facilities

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are. Mr. Beers noted that they are waiting for conformation from the Army Corp. that they only require a 100 ft. non-disturbance zone for the vernal pool. Mr. Stevens commented that they are still trying to come up with a subdivision plan that meets Mr. DiMatteo's request. He noted that they would like to work that out with Mr. DiMatteo and have it prepared for the final plan.

Mr. Stevens noted that they did provide a traffic study and they are prepared to cap activity at 68 trucks per day. Ms. Driscoll-Davis asked if they would create a condition for their contractors regarding the route they are required to take when entering and exiting the site. Mr. Stevens commented that they could give a suggested route but the location of their customers determine where they take the product after they leave the site. Mr. DiMatteo commented that the site is not a quarry and it is only important to remove the rock, storing it off site if they have to. Mr. Beers stated that he met with two contractors who do this kind of work and explained the circumstances. They mentioned that the principal consideration they have is where the storage site is and they want to retain the ability to control logistics and shipping schedule without a predetermined conclusion.

Mr. Alesse asked what the least and greatest amount of blasts would be. Mr. Beers responded that the contractors would not give that to them due to unforeseeable factors. Mr. DiMatteo asked if they could take the worst case scenario and see what that looks like to give them an opportunity to understand the state requirements would be on a worst case scenario. Mr. Stevens responded that a worst case scenario would be 300,000 cubic yards of material. Mr. Beers estimated that it would be 14 or 15 blasts. Mr. Stevens noted that they intend to blast the trench areas deeper than the rest but that they cannot estimate the density of the rock. Mr. Lincoln noted that he is not comfortable with the speculation and he supports a comprehensive excavation plan. He also requested more information on why the trucks have to go south instead of traveling north. He noted that what the contractor wants to do does not supersede what is in the code and findings of fact.

Ms. Wells commented that the SW Cole report did not address the questions that the KCC had asked regarding the conditions in the wetland after the blasting has occurred. She stated the concerns from another member of the Conservation Commission, a Hydrogeologist, regarding SW Cole not factoring in future conditions after the blasting and did not define the existing water table or groundwater flow regime. She added that they needed to know if the water table is within the bedrock level or below it and asked how the blast will impact the flow of water. She noted that it is important to know which direction the water flows. Mr. Beers objected to Ms. Wells' comments being made after the public hearing was closed and without being presented to the applicants with enough time to review them in advance.

Mr. Alesse commented on an environmental report regarding diesel fuel emissions. He noted that the real issue is with the trucks running and idling all day for a month. He would like an analysis

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of the environmental impact resulting from 60 or more trucks coming and going plus excavators on the hill. He stated that he would like to know that the air pollution question will be addressed. Mr. DiMatteo noted that there is a Maine state statute that deals with idling requirements. Mr. Alesse responded that it involves a time limit on the idling, noting that the limit is five minutes for every 60 minute period if the temperature is above a certain point and that the requirement changes depending on the time of year. Ms. Grinnell noted that they would need a third party to monitor that. Ms. Driscoll-Davis asked about the discussion of a mitigation plan to the damage to Idlewood lane. Ms. Grinnell responded that they would not discuss it at the point but would make it a condition.

Ms. Kalmar moved to grant conditional approval for preliminary plan review for a 78-lot expansion of the Yankee Commons Mobile Home Park located at US Route 1, Tax Map 66, Lot 24 and 25 in the Mixed Use (MU) and Residential – Rural (R-RL) Zones for owner/applicant Steven A. Hynes Real Property Trust Agreement. Conditions to include:

- 1. Modification to the road layout to accommodate sidewalk**
- 2. Development of a comprehensive plan for earth rock removal that complies with applicable provisions of the State of Maine**
- 3. Address limits to the daily trucking rate for rock removal**
- 4. Development of a mitigation plan for Idlewood Lane damage, including financial assurance and concurrence with Kittery Commissioner of Public Works**
- 5. Amendment to traffic report to address traffic questions in the CMA's September 1st letter**
- 6. Provide an estimate of the level of diesel emissions at the site with respect to particulates, nitrous oxides, carbon monoxide, volatile organic compounds and ozone**
- 7. Supply input from the Open Space Committee**
- 8. Respond to the concerns from the Conservation Commission in writing**
- 9. Address traffic concerns about removal of material**

Mr. Lincoln seconded the motion.

Mr. Lincoln requested to modify condition #3 to include a plan for the removal of the excavated material including routes to be taken. Ms. Grinnell clarified that Mr. Lincoln was requesting a traffic plan for the removal of the material off the site and suggested that they make that #9. Ms. Kalmar commented that the applicants mentioned that they could not predict the routes to be taken. Ms. Driscoll-Davis commented that the traffic analysis should cover some of those issues and that the applicant is very aware that the Board is concerned about the rock removal going through the outlets. Mr. Harris commented that they cannot get any answers to their questions until the project starts. He noted that the Town's snowplows are diesel and no one cares about those. Mr. Alesse responded that these trucks will be making 60 or more trips in and out of one location. Mr. Harris noted that the questions that they are asking cannot be answered until the

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project starts. Ms. Grinnell responded that the applicant is going to do their due diligence to get the answers.

Motion carried: 6-1-0 with Mr. Harris in opposition.

ITEM 5 – Spruce Creek Ventures, II – Minor Subdivision Sketch Plan Review

Action: approve or deny sketch plan. Owner/applicant Spruce Creek Ventures II requests consideration of a three-lot subdivision of 3.02 acres located at 9 Cook Street and Old Post Road (Tax Map 3, Lot 77-A) in the Residential – Urban (R-U) Zone. Agent is Chris Wilber, Chris Wilber Consulting.

Chris Wilber of Chris Wilber Consulting approached the podium to provide the following points:

- Mr. Wilber noted that, subsequent to the sitewalk last month, they had taken comments received into consideration and changed the sketch plan to show a cluster of six units as opposed to the original three-lot subdivision.
- The six units are in close proximity in order to leave open space in the center with a foot path going in between the right of way. Mr. Wilber commented that they are going to try and save as many trees as possible. He added that the road is virtually unchanged.

Ms. Grinnell asked about the roadway and Mr. DiMatteo responded that it is a private road. Ms. Kalmar asked the applicant to get together with Mr. DiMatteo to discuss the gradient on the roadway because it is currently too high. Mr. Wilber noted that they are trying to minimize blasting and impact on the site and it is difficult to balance grade and length of road to minimize impacts. Ms. Grinnell responded that they would prefer that the Mr. Wilbur meet with Mr. DiMatteo to get the plan within the limits of the code. Ms. Kalmar asked Mr. Wilbur if he had read Mr. DiMatteo's notes about the footprint of the current plan. Mr. Wilber commented that he did not receive Mr. DiMatteo's notes prior to this meeting but after reading it quickly, noted that Mr. DiMatteo had mentioned the idea of multi units but that he spoke to Mr. Bischoff who recommended a single family scenario which would best fit the current market.

Ms. Kalmar moved to continue the sketch plan application dated June 18, 2015 from owner/applicant Spruce Creek Ventures II for a three-lot subdivision of 3.02 acres located at 9 Cook Street and Old Post Road (Tax Map 3, Lot 77-A) in the Residential-Urban (R-U) Zone not to exceed 90 days.

Ms. Driscoll-Davis seconded.

Motion carried: 7-0-0

**ITEM 6 – Weathervane-Badgers Is. Redevelopment — Subdivision/Shoreland
Development – Sketch Plan Review**

Action: approve or deny sketch plan. Owner Gagner Family Limited and applicant Stephen Kelm requests consideration of a 7-dwelling subdivision of 0.8 acres located at 31 Badgers Island West (Tax Map 1, Lot 31) in the Mixed Use – Badgers Island (MU-BI) Zone and Shoreland Overlay (OZ-SL) and Commercial Fisheries/Maritime Activities (OZ-CMFU) Overlay Zones. Agent is Eric D. Weinrieb, P.E., Altus Engineering.

Eric Weinrieb of Altus Engineering approached the podium to present the following points:

- Mr. Weinrieb described the aerial view of the property and noted that their intent is to take away the commercial use of the property and make it solely residential. He noted that they would like to have seven units on the property even though they only have density for five units. Mr. Weinrieb commented that they will be able to provide stormwater management and will continue to have a sewer pump system.
- Mr. Weinrieb noted that he would like feedback on the public access that was noted on the plan for the restaurant. He stated that since this is now a residential property, he would like to eliminate the possibility of public access and requested a waiver on the high intensity soil survey on the site. Mr. Weinrieb asked for feedback on the number of units as well as the reconstruction of the building, which he will need to tear down and rebuild because it currently sits on piles. He noted that whether the building has five units or seven units it will remain the same size, only the sq. ft. of the units will change.

Ms. Grinnell commented on the nonconforming use of the building and confirmed that they wanted to tear the building down and rebuild it on the same footprint. Mr. DiMatteo commented that if greater than 50% of the market value is removed then the Board will need to determine if the building is the furthest distance away as practicable from the protected resource. Ms. Grinnell noted that they would have to waive the requirement and requested that the applicant make the case as to why they cannot move the building back further. Ms. Kalmar questioned the percentage of nonconformity of the building as one of its former uses as a seafood business was conforming. She stated that she believes that the nonconformity will be greater as a residential building. Ms. Driscoll-Davis agreed that the former lobster business was required to be on the water and the proposed residential use was therefore more nonconforming.

Mr. Lincoln asked if the current building is over the water. Mr. Weinrieb responded that parts of the building are over the water. Mr. Lincoln asked if the parts of the building that are over the water will be rebuilt as part of the condos. Mr. Weinrieb responded that they have moved it back some, which is depicted by the dark red line on the plan. Mr. Alesse asked why the building could not be pulled back fully onto the land to which Mr. Weinrieb responded that it would be

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intruding on the parking lot. Ms. Driscoll-Davis asked if they could include more parking under the building. Mr. Weinrieb commented that moving the building off the water would lower the market value of the property. Ms. Grinnell commented that if they tear the building down completely, the new building would be required to be moved back 75 feet from the water. Ms. Kalmar noted that the code calls for the building to be moved back to the greatest extent practical and noted that the applicant should work these issues out with the Town Planner. Ms. Kalmar read the factors that the Board would use to decide how far back the new building would have to be.

Mr. DiMatteo noted that they would need to discuss public access on the property. Ms. Grinnell asked about the size of the building and commented that there can only be 5 units in the building and they are currently unsure whether the building can be rebuilt over the water. Mr. Lincoln noted that the applicant might want to consider reconfiguring the design. He stated that they might not be able to get water views but at least they would be able to proceed. Mr. Alesse asked if waterfront or maritime activity was required on the property and Ms. Driscoll-Davis responded that they are required to allow that if the building is not set back far enough from the water.

Ms. Kalmar moved to continue sketch plan application dated August 20, 2015 for owner Gagner Family Limited and applicant Stephen Kelm for 31 Badgers Island West (Tax Map 1, Lot 31) in the Mixed Use-Badgers Island (MU-BI) Zone and Shoreland Overlay (OZ-SL) and Commercial Fisheries/Maritime Activities (OZ-CMFU) Overlay Zones not to exceed 90 days.

Mr. Lincoln seconded.

Motion carried: 7-0-0

ITEM 7 – Board Member Items/Discussion

Ms. Kalmar commented that the Board needs to entertain the idea of extending a six month extension for the Operation Blessing plan and they require a vote on it tonight.

Mr. Alesse moved to approve a six month extension for the Operation Blessing plan.

Ms. Kalmar seconded the motion.

Ms. Kalmar noted that they are entitled to an extension because the code states that if you are at the final plan and have a written request you are allowed an extension.

Motion carried 7-0-0

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Mr. Alesse moved to adjourn.

Mr. Lincoln seconded.

Motion carried: 7-0-0

The Kittery Planning Board meeting of September 10, 2015 was adjourned at 9:47 p.m.

Submitted by Valerie Porrazzo, Minutes Recorder, September 15, 2015.